IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.5281 OF 1998.

Mrs.Bilquis wid/o.Hafizuddin
Kamaluddin Kazi, Indian Citizen,
temporarily residing at Bela Court,
Shahid Bhagatsingh Road, Colaba,
Bombay 400 005. ... Plaintiff.

Versus.

1. Caprihans India Limited,
   a public limited and existing
   company registered under the
   Companies Act, 1956 and having
   its registered office at Block
   D, Shivsagar Estate, Bombay 400018.

2. Nibbana Cooperative Housing Society
   Ltd., a society registered under
   the Maharashtra Cooperative Societies
   Act, 1960 under Registration No.BOM/
   HSG/628 of 1964, Pali Hill Road,
   Bombay 400 050. ... Defendants.

Ms.Rohini Dandekar i/by M/s.Berarwalla & Co. for the Plaintiff.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 23rd July, 2007.

ORAL JUDGMENT.:

1. The suit is kept under the caption of undefended suits for exparte decree. The Plaintiff has filed an affidavit in lieu of evidence of one Abiya Jamil Ahmed Parkar, Constituted Attorney of the Plaintiff. Zerox copies of the original documents relied upon by the Plaintiff are annexed to the affidavit. The original documents are produced for my perusal.

2. The Constituted Attorney of the Plaintiff is the

daughter of the Plaintiff. The Plaintiff is the owner of flat No.91 which is more particularly described in the plaint. By the leave and licence agreement dated 6th July 1971, the 1st Defendant was allowed to use the suit flat. A suit for possession was filed in the Court of Small Causes by the Plaintiff against the 1st Defendant. The suit was decreed on 15th October 2003. According to the case of the Plaintiff, the 1st Defendant handed over possession of the suit flat to the Plaintiff on 12th November 2003.

3. The claim in the suit is of Rs.14,39,873/-. The Plaintiff has also prayed for a decree in the sum of Rs.25,000/- as compensation from the date of filing of the suit till vacant possession of the flat was given to the Plaintiff. As stated earlier, the Plaintiff has been put in vacant possession of the flat on 12th November 2003.

4. My attention has been invited to the order dated 26th March 2007 passed by this Court in Notice of Motion No.1080 of 2001 by which the said Notice of Motion has been made absolute in terms of prayer clause (a) thereof. Prayer clause (a) thereof reads thus:-

> (a) That pending the hearing and final disposal of this suit Defendant No.1 be directed to pay to the Plaintiff the

amount of Rs.14,39,873.00 (Rupees Fourteen lakhs Thirty Nine Thousand Eight Hundred Seventy Three only) and monthly compensation of Rs.25,000/- (Rupees Twenty five thousand only) as mense profits/damages as per prayer clause (a) of the plaint under Order XVA of the Code of Civil Procedure, 1908."

5. The claim of Rs.14,39,873.00 is of arrears of outgoings, repair charges, compensation for occupation at the rate of Rs.25,000/- p.m. upto the date of suit in respect of the use of the flat and interest on the aforesaid amounts. The claim of the Plaintiffs in this suit has been duly proved by the affidavit of the Constituted Attorney of the Plaintiff. There is no written statement filed by the Plaintiff disputing the claim.

6. Though the Plaintiff is entitled to a decree as prayed, the sum of Rs.25,000/- per month as prayed in prayer clause (a) will be payable only till the end of October 2003 as the Plaintiff has been put in possession of the flat in November 2003. The learned Counsel appearing for the Plaintiff has stated that the Defendant has not complied with the order dated 26th March 2007 passed in Notice of Motion no.1080 of 2001. Considering the nature of the order made in the Notice

of Motion, if any amount is paid or deposited by the 1st Defendant in compliance with the said order, the said Defendant will be entitled to adjustment of the said amount against the amount payable as per the decree.

7. Hence the following order is passed:

(i) The 1st Defendant is ordered and decreed to pay a sum of Rs.14,39,837/- to the Plaintiff as well as a sum of Rs.25,000/- per month from the date of filing of the suit till the end of October 2003.

(ii) The 1st Defendant is ordered to pay costs of the suit to the Plaintiff.

(iii) If any amount is paid or deposited by the 1st Defendant on the basis of the order passed in Notice of Motion No.1080 of 2001, the 1st Defendant will be entitled to adjust the said amount against the amount payable under the decree passed by this Court.

Judge.